

Notice of Allowability

Application No.

10/708,711

Examiner

Charles A. Marmor, II

Applicant(s)

FISHER, JOHN S.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed 10 January 2005 and the telephonic interview of 01 February 2005.
2. ☒ The allowed claim(s) is/are 1-16.
3. ☒ The drawings filed on 19 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).


* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 02012005.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


Charles A. Marmor, II
Primary Examiner
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EXAMINER'S AMENDMENT

1. This Office Action is responsive to the Amendment filed January 10, 2005. The Examiner acknowledges the amendments to the Specification; the amendments to claims 1-3, 5, 7 and 8; and the addition of new claims 10-16. Claims 1-16 are pending.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ronald E. Smith on February 1, 2005.

3. The application has been amended as follows:

a. Claim 1 has been amended as follows:

1. (Currently Amended) An aspiration biopsy needle, comprising:
 - a needle of elongate, hollow construction having a proximal end and a beveled distal end;
 - said needle having a uniform diameter along an extent thereof;
 - said needle having a longitudinal axis of symmetry;
 - said beveled distal end forming a first sharp edge adapted to scrape tissue when said needle is inserted into said tissue, said needle being displaced from a proximal position to a distal position during insertion;
 - a first slot formed in said needle near said beveled distal end;

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said first slot being formed in said needle on a first side of said longitudinal axis of symmetry;

said first slot being transversely disposed relative to [[a]] said longitudinal axis of said needle;

said first slot also being angled relative to a transverse axis of said needle such that a bottom of said first slot is positioned distal to an opening of said first slot;

said opening of said first slot being in open communication with an exterior surface of said needle;

said first slot including a second sharp edge ~~that scrapes~~ adapted to scrape tissue when said needle is displaced from a distal position to a proximal position;

a second slot formed in said needle, said second slot being in longitudinally spaced apart relation to said first slot;

said second slot being formed in said needle on said first side of said longitudinal axis of symmetry such that said second slot is axially aligned with said first slot;

said second slot being transversely disposed relative to [[a]] said longitudinal axis of said needle;

said second slot being angled relative to a transverse axis of said needle such that a bottom of said second slot is positioned proximal to an opening of said second slot;

said opening of said second slot being in open communication with an exterior surface of said needle;

said second slot including a third sharp edge adapted to scrape tissue when said needle is displaced from a proximal position to a distal position; and

means for communicating a vacuum to said proximal end of said needle so that tissue scraped by said first and third sharp edges during proximal-to-distal travel of said needle is pulled into a lumen of said needle and so that tissue scraped by said second sharp edge during distal-to-proximal travel of said needle is also pulled into said lumen.

b. Claim 10 is amended as follows:

10. (Currently Amended) An aspiration biopsy needle, comprising:

- a needle of elongate, hollow construction having a proximal end and a beveled distal end;

- said needle having a uniform diameter along an extent thereof;

- said needle having a longitudinal axis ~~of symmetry~~;

- said beveled distal end forming a first sharp edge adapted to scrape tissue when said needle is inserted into said tissue, said needle being displaced from a proximal position to a distal position during insertion;

- a first slot formed in said needle near said beveled distal end;

- said first slot being formed in said needle on a first side of said longitudinal axis ~~of symmetry~~;

- said first slot being transversely disposed relative to ~~[[a]]~~ said longitudinal axis of said needle;

- said first slot also being angled relative to a transverse axis of said needle such that a bottom of said first slot is positioned distal to an opening of said first slot;

- said opening of said first slot being in open communication with an exterior surface of said needle;

- said first slot including a second sharp edge ~~that scrapes~~ adapted to scrape tissue when said needle is displaced from a distal position to a proximal position;

- a second slot formed in said needle, said second slot being in longitudinally spaced apart relation to said first slot;

- said second slot being formed in said needle on said first side of said longitudinal axis ~~of symmetry~~;

- said second slot being transversely disposed relative to ~~[[a]]~~ said longitudinal axis of said needle;

- said second slot being angled relative to a transverse axis of said needle such that a bottom of said second slot is positioned proximal to an opening of said second slot;

- said opening of said second slot being in open communication with an exterior surface of said needle;

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said second slot including a third sharp edge adapted to scrape tissue when said needle is displaced from a proximal position to a distal position; and

means for communicating a vacuum to said proximal end of said needle so that tissue scraped by said first and third sharp edges during proximal-to-distal travel of said needle is pulled into a lumen of said needle and so that tissue scraped by said second sharp edge during distal-to-proximal travel of said needle is also pulled into said lumen;

said first slot and said second slot, respectively, having a circumferential extent of about one half the circumference of said needle; and

said second sharp edge being elevated with respect to said exterior surface of said needle.

4. The following is an examiner's statement of reasons for allowance:

Regarding claims 1-9, no prior art of record teach or fairly suggest an aspiration biopsy needle, as claimed by Applicant, with a first slot transversely disposed relative to the longitudinal axis of the needle and angled relative to a transverse axis of the needle, such that a bottom of the first slot is positioned distal to an opening of the first slot so a second sharp edge is formed for scraping tissue upon distal-to-proximal displacement of the needle and with a second slot transversely disposed relative to the longitudinal axis of the needle, longitudinally spaced from and *axially aligned with* the first slot, and angled relative to a transverse axis of the needle, such that a bottom of the second slot is positioned proximal to an opening of the second slot so a third sharp edge is formed for scraping tissue upon proximal-to-distal displacement of the needle.

Regarding claims 10-16, no prior art of record teach or fairly suggest an aspiration biopsy needle, as claimed by Applicant, with a first slot transversely disposed relative to the longitudinal axis of the needle and angled relative to a transverse axis of the needle, such that a bottom of the

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first slot is positioned distal to an opening of the first slot so a second sharp edge is formed for scraping tissue upon distal-to-proximal displacement of the needle and with a second slot transversely disposed relative to the longitudinal axis of the needle, longitudinally spaced from the first slot, and angled relative to a transverse axis of the needle, such that a bottom of the second slot is positioned proximal to an opening of the second slot so a third sharp edge is formed for scraping tissue upon proximal-to-distal displacement of the needle, and where the second sharp edge is elevated with respect to an exterior surface of the needle.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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February 1, 2005